

Response Under 37 CFR §1.111
Serial No.: 10/801,094
Response dated February 16, 2006
In reply to the Office action mailed August 16, 2005

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REMARKS

Responsive to the Office action mailed November 22, 2005, Applicants provide the following remarks. As of the August 16th Office action, claims 1-18 were pending in the application, with claims 11 and 18 being withdrawn from consideration. Reexamination and allowance of the application is respectfully requested.

Amendments to the Claims

Independent claim 1 has been amended to incorporate the subject matter of claim 2. Claim 2 has, accordingly, been cancelled. Additionally, "the at least one door" has been more clearly defined as being a "lateral door" as described in paragraph [0009] of the published application. Similarly, the insert has been more clearly defined as being "laterally open over its entire height," as shown, for example, in FIGS. 1A, 1B, 2A, and 2B and described, e.g., in paragraph [0032] of the published patent application. No new matter is believed introduced by this amendment.

New independent claim 19 has been added, generally reciting the subject matter of original claims 1, 5, and 6, and disclosed, for example, in paragraphs [0032], [0042] and FIGS. 1 through 4 of the published patent application. Accordingly, no new matter is believed entered by this amendment. Additionally, Applicants note that claims 5 and 6, the subject matter of which has been incorporated into new claim 19, have not been rejected over the art. As such, it is respectfully submitted that new independent claim 19 is allowable over the art of record.

New independent claim 20 has also been added, generally directed at the subject matter of original claims 1, 3, and 9, as well as, for example, paragraph [0011], [0018] through [0020], [0032] and FIGS. 1 through 4 of the published patent application. No new matter is, therefore, believed entered by this amendment. This claim is also believed to be allowable over the art of record.

Rejections Under 35 U.S.C. §112

Claims 1-10, and 12-17 were rejected under 35 U.S.C. §112, first paragraph, as failing to enable the claimed invention. In particular, the Examiner first argued that the claimed heat exchanger is not shown or described. In this regard, Applicants respectfully submit that a heat exchanger is a structure which is well known by those having skill in the art. However, Applicants do not merely rely upon the knowledge of skilled artisans. Referring, for example, to paragraph [0048] of the published application, and FIGS. 3 and 4, the heat exchanger 6 includes

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cooling coils 26. The cooling coils 26 are shown as being disposed around the insert 9, and disclosed as being capable of exchanging a fluid refrigerating medium with a refrigerating unit 7, e.g., via connections 25. Therefore, as clearly shown and described, the heat exchanger may include cooling coils 26 capable of carrying a fluid refrigerant medium, and disposed around the insert 9. Clearly, circulating the fluid refrigerant medium from a refrigerating unit 7 through the cooling coils 26 generates cold air to cool the ice cream.

Additionally, the Examiner argued that the insert, indicated by reference numeral 9, is not clear, especially in terms of how the insert may be filled with ice cream outside of the housing 2. Particularly the Examiner noted that the insert did not appear to provide an enclosure which can hold liquid ice cream mix. Applicants respectfully submit that the claimed invention is directed at an apparatus for storing and presenting ice cream which has already been manufactured, and not for actually manufacturing ice cream from a mix. Accordingly, the claimed invention recites a structure which may store ice cream by maintaining previously manufactured ice cream in a frozen condition and which may present the frozen ice cream, e.g., at buffets, ice cream parlors and the like. The claimed invention may, therefore, allow the ice cream to be presented in a much more favorable manner. In this regard, Applicants direct the Examiner attention to, for example, paragraph [0005] of the published application which teaches "ice cream can, for example, be placed on the insert in blocks." Accordingly, it is not necessary for the insert to enclose a liquid, but rather only support a solid mass of frozen ice cream.

Concerning the feature of the receiving compartment protruding laterally from the housing, Applicants respectfully direct the Examiner's attention to FIGS. 1B, 2B, and 3, as well as paragraph [0014] of the published applications. Consistent with the drawings and specification, the "insert preferably protrudes laterally from the housing over its entire height. The door can reach around the insert on the upper and/or lower side and seal the protruding area against the housing." Accordingly, the insert protrudes laterally from the housing and the doors 8, which define a portion of the receiving compartment 5, also protrude laterally from the housing 2 to surround the insert 9.

Finally, Applicants direct the Examiner's attention to paragraph [0052] of the published application, which describes the operation of the selector switch 29, depicted in FIG. 2B. As described, "different types of ice cream [can be] filled into the individual segments of the insert 9." "[T]he lower plate [] can be moved into different target positions by the selector switch, each

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of which is assigned to a segment" which may contain a different type of ice cream. Accordingly, the selector switch may allow the "different types of ice cream filled into the individual segments of insert 9 [to be] selectively positioned in the area of the ice cream removal opening 10 of the housing 2."

In summary, Applicants respectfully submit that the claims pending in the present application are fully enabled by the specification. Accordingly, Applicants respectfully request that the rejection of claims 1-10 and 12-17 under 35 U.S.C. §112, first paragraph, be withdrawn upon reconsideration.

Rejections Under 35 U.S.C. §102

Claims 1-3, 7-10, 12, 16, and 17 were rejected under 35 U.S.C. §102(b) as being anticipated by Parker (U.S. Patent No. 1,609,915). Applicants respectfully traverse this rejection.

Parker is directed at an apparatus for making ice cream by freezing cream and other substances. See, line 2. The disclosed apparatus generally includes a casing body 1, which is open at its upper end. See, lines 14-15. A can 12, having an open upper end which is capped by a removable cover 13, is provided for receiving a substance to be frozen. See, lines 35-40. In operation, "appropriate mixture [to be frozen] is poured in the can 12, and the dasher 21 is placed in position [within the can 12]" and the can 12 is rotated relative to the dasher 21. See, lines 97-99.

By contrast to the teachings of Parker, claim 1, as amended, recites:

Refrigerating device for storing and presenting ice cream, with a heat-insulating housing, where the housing displays a housing opening and a storage device with a receiving compartment for ice cream, where the housing essentially surrounds the receiving compartment completely and the storage device is mounted in the housing in rotating fashion, and where a heat exchanger for generating cold air is assigned to the housing and can be connected to a refrigerating unit located inside or outside the housing, such that the ice cream in the receiving compartment can be refrigerated by the cold air generated,

wherein the storage device is designed as an insert that can be fitted or removed through the housing opening or both,

wherein the housing encompasses at least one lateral door for sealing off a housing opening designed as an ice cream removal opening, and

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wherein the insert is dimensioned in such a way that it can be passed through the open door and wherein the insert is laterally open over its entire height. (Emphasis added)

It is respectfully submitted that Parker fails to disclose a housing encompassing at least one lateral door allowing the insert to be fitted or removed from the housing, or the aspect of the insert being laterally open over its entire height. These features may, for example, allow the insert to be easily inserted and removed and may also allow ice cream to be very easily removed through the large opening of the housing over the entire vertical dimension of the insert. These aspects of the invention of independent claim 1 are not taught, or even suggested, by Parker. In fact, Parker is not even susceptible to being modified to provide these aspects. For example, Parker discloses that the can 12 is completely surrounded by the refrigerant conduit 30, eliminating the possibility of a lateral door. Similarly, as the can 12 must be able to contain a liquid mix to be frozen, the can 12 may not be provided laterally open over its entire height, as required by claim 1. Withdrawal of the rejection of independent claim 1, and claims 2-3, 7-10, 12, 16, and 17 ultimately depending thereupon, is respectfully requested in view of the amendments and remarks herein.

Rejections Under 35 U.S.C. §103

Claim 4 was rejected under 35 U.S.C. §103(a) as being obvious over the combined teachings of Parker and Gonzalez, Sr. (U.S. Patent No. 6,370,798). Applicants respectfully submit that Gonzalez is non-analogous art and may not properly be used in making out an obviousness rejection.

In regard to this rejection, it is noted that the claimed invention is directed at an apparatus for storing and presenting ice cream. However, Gonzalez is directed at a vacuum assisted clothes dryer which "generally comprises a fixed frame, a rotatable drum within the fixed frame for holding and tumbling clothing within a vacuum sealable interior space." Col. 1, l. 65-67. "In at least one embodiment, a plurality of heating pads are provided about the interior of the drum for imparting increased temperature to the clothing held therein." Col. 2, l. 8-10.

Those skilled in the art would recognize from even a cursory review of Gonzalez that the apparatus disclosed therein may be useful in connection with drying or caring for clothing. However, one skilled in the art simply would not look to clothes dryer for any teaching or suggestion related to any aspect of ice cream storage or presentation. Applicants respectfully

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submit, therefore, that the clothes dryer disclosed in Gonzales would be non-analogous art, which may not properly form the basis of an obviousness rejection.

As the Examiner knows, "two criteria have evolved for determining whether prior art is analogous: (1) whether the art is from the same field of endeavor, regardless of the problem addressed, and (2) if the reference is not within the field of the inventor's endeavor, whether the reference is still reasonably pertinent to the particular problem with which the inventor is involved." *In re Clay*, 966 F.2d 656, 23 USPQ2d 1058 (Fed. Cir. 1992). The inventors' field of endeavor in the present application is the field ice cream storage and presentation. Gonzales is completely devoid of any discussion or suggestion that in any way relates to ice cream. The clothes dryer of Gonzales cannot be considered within the Applicants' field of endeavor.

A reference may be "reasonably pertinent," even if it is in a different field of endeavor if "it is one which, because of the matter with which it deals, logically would have commended itself to an inventor's attention in considering his problem." *Id.* A person having ordinary skill in the art would not have considered references dealing with clothes dryer in an attempt to solve the problem of ice cream storage and presentation. Accordingly, Applicants respectfully submit that Gonzales should be considered as non-analogous art, and that the rejection of claims under 35 USC § 103(a) based on Parker in view of Gonzales should be withdrawn upon the basis that Parker fails to teach or suggest the claimed invention.

Even assuming, however, that Gonzalez could be considered analogous art, Gonzalez fails to remedy the deficiencies of the primary reference. For example, Gonzalez does not teach an insert which is "laterally open over its entire height." Accordingly, even considering the combined teachings of Parker and Gonzales, the cited references fail to teach, or even suggest every aspect of independent claim 1, let alone claim 4 depending thereupon. Withdrawal of this rejection is respectfully requested upon reconsideration.

Finally, claims 14, and 15 were rejected under 35 U.S.C. §103(a) as being obvious over Parker in view of Anderson (U.S. Patent No. 2,555,624). Anderson is directed at an "attachment for mechanically agitating ice cream while being frozen in a home freezer." Col. 1, l. 2-4. Generally, the apparatus includes a "container 41 ... of any desired size [which] is provided with the outturned flange 42 at its open end upon which rests the cover 43 provided with a gasket 44 and secured thereto by means of the bolts 45." Col. 2, l. 4-8. "Surrounding the container 41 and spaced therefrom by means of the radial fins 53 is the cylindrical casing 54." "Extending

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downwardly from the band 39 are the intumed arms 56 which support the flange 42 of the container [41]." Col. 2, l. 17-24. In use, the container 41 and the casing 54 are disposed within a freezer, such as is employed for storing frozen foods in the home.

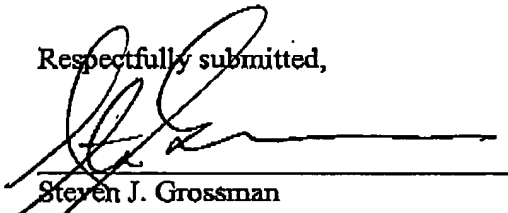
Applicants respectfully submit that the combined teachings of Parker and Anderson clearly fail to teach every aspect of claims 14 and 15, let alone all of the elements of independent claim 1, upon which claims 14 and 15 ultimately depend. For example, Parker and Anderson fail to teach, or even suggest, the claimed "housing encompass[ing] at least one lateral door" or an insert which "is laterally open over its entire height." In view of these deficiencies, Applicants respectfully request that the rejection of claims 14 and 15 over the combined teachings of Parker and Anderson be withdrawn upon reconsideration.

Having overcome the outstanding rejections of independent claim 1, which is believed to be generic to all of the species claimed in this application, Applicants respectfully submit that previously withdrawn claims 11 and 18 are also in condition for allowance and should be rejoined in this application.

Having overcome all of the outstanding rejections, Applicants respectfully submit that the application is now in condition for allowance. Early allowance is respectfully requested.

In the event that there are any fee deficiencies, or additional fees are payable, please charge, or credit any overpayment to, our Deposit Account No. 50-2121.

Respectfully submitted,



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